

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

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|---------------------------|---|------------------------|
| REBECCA ANN GOETZ, |) | |
| |) | |
| Plaintiff, |) | Case No. 4:23-cv-00031 |
| |) | |
| v. |) | |
| |) | |
| KIMBERLY GARDNER, et al., |) | |
| |) | |
| Defendants. |) | |

MOTION TO DISMISS

COME NOW Defendants Kimberly Gardner in her individual capacity and in her official capacity as the Circuit Attorney for the City of St. Louis, Serena Wilson-Griffin in her individual capacity, and Victor Martin in his individual capacity (collectively the “CAO Defendants”) by and through undersigned counsel and move to dismiss Plaintiff’s Complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure. In support of this Motion, the CAO Defendants state as follows:

1. Plaintiff’s Complaint alleges Plaintiff was terminated because of her race (Count III) or that her termination was retaliation for opposing an incident in which a non-supervisory co-worker said Plaintiff was “acting as a slave owner” (Count IV). She also claims the CAO Defendants conspired to terminate her. (Count VI).

2. Plaintiff’s claims against the Circuit Attorney in her official capacity should be dismissed because the claims are barred by the doctrine of sovereign immunity. *See Rodgers v. Univ. of Mo. Bd. of Curators*, 56 F. Supp. 3d 1037, 1049 (E.D. Mo. 2014), *aff’d as modified sub nom. Rodgers v. Curators of Univ. of Mo. Sys.*, 634 F. App’x 598 (8th Cir. 2015).

3. Plaintiff’s race-motivated wrongful discharge claim should be dismissed because Plaintiff has failed to plead either direct evidence plausibly demonstrating a racially discriminatory motive or disparate treatment. Instead, she pled the opposite: Ms. Gardner hired Plaintiff and gave

Plaintiff a raise shortly before her termination. Complaint ¶¶ 1, 33. Further, and perhaps most significantly, Ms. Gardner did not terminate another employee of the same race as Plaintiff whom Plaintiff contends was engaged in the same conduct as Plaintiff. Complaint ¶¶ 74, 91, 102, 139-40.

4. Plaintiff's retaliatory discharge claim should be dismissed. No reasonable person apprised of the applicable precedents would believe Plaintiff was subjected to severe and pervasive discrimination actionable under 42 U.S.C. Section 1981. *See Singletary v. Missouri Dep't of Corr.*, 423 F.3d 886, 892 (8th Cir. 2005) ("Hostile work environment harassment occurs when the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment."); *Gibson v. Concrete Equip. Co., Inc.*, 960 F.3d 1057, 1064–65 (8th Cir. 2020) ("An individual making a complaint must have an objectively reasonable belief that an actionable [] violation has occurred for the complaint to qualify as a protected activity.") Further, she did not reasonably oppose any purported hostile environment when she texted her friend vowing to have her co-worker terminated and admitted, "I [am] not worried about what I sent because, once again, my intent was talking to someone I thought was a friend. I had no idea it would be seen by anyone else." *See* Exhibit A.

5. Plaintiff's conspiracy claim should be dismissed because the underlying claims fail. Further, Plaintiff admitted that all Defendants were working within the scope of their employment and a single entity cannot conspire with itself. Additionally, Plaintiff has pled no facts showing the existence of a conspiracy to achieve an unlawful objective.

6. Pursuant to Local Rule 4.01(A) the CAO Defendants incorporate by reference as if fully stated here their contemporaneously filed Memorandum in Support of their Motion to Dismiss.

WHEREFORE, the CAO Defendants respectfully request this Court Grant their Motion to Dismiss and order such other and further relief as this Court deems just and proper.

Respectfully submitted,

CAPES, SOKOL, GOODMAN & SARACHAN, P.C.

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**Attorneys for Defendants Kimberly Gardner,
Serena Wilson Griffin, and Victor H. Martin.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via electronic mail to the counsel for Plaintiff and filed using the Court's ECF filing system this 10th day of March, 2023:

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